

2004

IHC Health Systems, Inc. d/b/a LDS Hospital v.  
Utah Department of Health, Division of Health  
Care Financing : Reply Brief of Petitioner

Utah Court of Appeals

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NO. 200440487-CA

IN THE UTAH COURT OF APPEALS

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IHC HEALTH SYSTEMS, INC. d/b/a LDS HOSPITAL,

*Petitioner,*

VS.

UTAH DEPARTMENT OF HEALTH,  
DIVISION OF HEALTH CARE FINANCING,

*Respondent.*

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On Petition for Review From the Agency Decision  
Rendered by the Utah Department of Health  
Division of Health Care Financing  
Agency Decision No. 03-224-22

UTAH COURT OF APPEALS  
BRIEF

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REPLY BRIEF OF PETITIONER

DOCKET NO. 200440487-CA

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ORAL ARGUMENT REQUESTED

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## TABLE OF CONTENTS

TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES .....	iv
ARGUMENT AND AUTHORITIES .....	2
I. LDS HOSPITAL’S BELIEF THAT KEYONTAE PITTMAN WAS COVERED BY IHC HEALTH PLANS IS A VALID EXCUSE FOR FAILURE TO OBTAIN AUTHORIZATION .....	2
A. <i>Molina Healthcare Paid the Earlier Charges Because of LDS Hospital’s Belief That Pitman Was Covered by Another Insurer</i> .....	2
B. <i>The Department’s Emergency Services Argument is Not Supported by the Record</i> .....	3
C. <i>There is No Evidence, or Finding, that Primary Children’s Hospital Had The Same Information as LDS Hospital</i> .....	4
II. THE UTAH DEPARTMENT OF HEALTH HAS STILL FAILED TO HOW IT WAS POSSIBLE FOR LDS HOSPITAL TO MEET THE MOLINA AUTHORIZATION REQUIREMENTS .....	4
A. <i>The Decision that Was Appealed to the Administrative Law Judge was Molina’s Denial of the Claim for Lack of Authorization</i> .....	5
B. <i>Molina’s Authorization Policies Requires that LDS Hospital Obtain Preauthorization or Provide Notice Within 48 Hours of Admission</i> .....	6
C. <i>It is Undisputed that LDS Hospital Could Not Obtain Preauthorization or Provide Notice within 48 Hours of Admission</i> .....	6
D. <i>The Department Has Created a Situation Where LDS Hospital Never Comply with Molina’s Authorization Policies</i> .....	6

III.	THE DEPARTMENT IMPROPERLY CITED TO STRICKEN . . . . .	7
	EVIDENCE ABOUT LDS HOSPITAL’S ALLEGED KNOWLEDGE OF COVERAGE	
A.	<i>The Evidence Cited by The Department was Stricken from the Record as Untimely</i> . . . . .	7
B.	<i>The Evidence Cited by the Department is Misleading because it is Incomplete</i> . . . . .	7
IV.	THE DEPARTMENT’S PROCEDURAL CHALLENGES TO LDS . . . . .	8
	HOSPITAL’S APPEAL ARE WITHOUT MERIT	
A.	<i>LDS Hospital Preserved the Issues Presented on Appeal</i> . . . . .	8
B.	<i>LDS Hospital Met the Requirements of Rule 24(a)(9)</i> . . . . .	9
C.	<i>LDS Hospital has Properly Challenged the Findings of the Department</i> . . . . .	9
	CONCLUSION . . . . .	10
	CERTIFICATE OF FILING AND SERVICE . . . . .	11

## TABLE OF AUTHORITIES

### Cases

<i>Badger v. Brooklyn Canal Co.</i> , . . . . .	8
966 P. 2d 844,847 (Utah 1998)	

### Rules

Utah Rule of Appellate Procedure 24 . . . . .	2, 3, 5, 7, 13
Utah Administrative Rule 414-1-13 . . . . .	5, 19

### Statutes

Utah Code Ann. § 63-46b-16 . . . . .	2
Utah Code Ann. § 78-2a-3 . . . . .	2

### Other Authorities

Utah Medicaid Provider Manual, Section 1, 4-4 . . . . .	5, 19
Utah Medicaid Provider Manual, Section 1, 5 . . . . .	5, 19

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REPLY BRIEF OF PETITIONER

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TO THE HONORABLE JUSTICES OF THE UTAH COURT OF APPEALS:

Pursuant to the Utah Rules of Appellate Procedure, IHC Health Systems, Inc. d/b/a LDS Hospital ("LDS Hospital"), files this Reply Brief in response to Appellee's Brief filed on October 29, 2004 and as further basis for determining that the Utah Department of Health, Division of Health Care Financing's ("the Department") decision upholding the denial of payment for the treatment of Keyontae Pittman from August 19, 2002 through October 29, 2002 was in error.

## ARGUMENT AND AUTHORITIES

### **I. LDS HOSPITAL'S BELIEF THAT KEYONTAE PITTMAN WAS COVERED BY IHC HEALTH PLANS IS A VALID EXCUSE FOR FAILURE TO OBTAIN AUTHORIZATION.**

In its Brief, the Department concludes that “[t]he existence of a primary insurer does not excuse the requirements for notifying Molina as a secondary insurer.” *See Appellee’s Brief*, p. 12. However, the Department cites neither statute nor policy for this assertion. There is also no citation to the record on this issue. Finally, the Department failed to even respond to the reasoning of Molina in paying for the treatment of Keyontae Pittman from his birth until August 14, 2002.

As is shown below, Molina certainly thought that LDS Hospital’s belief excused the authorization requirements when it paid for LDS Hospital’s previous unauthorized treatment. *See App. Rec.*, p. 2.

#### ***A. Molina Healthcare Paid the Earlier Charges Because of LDS Hospital’s Belief That Pittman Was Covered by Another Insurer.***

The Department dismisses LDS Hospital’s arguments that it acted reasonably in not obtaining authorization because of its understanding that Keyontae Pittman’s primary insurance carrier was IHC Health Plans. *See Appellee’s Brief*, p.12. However, in agreeing to pay for LDS Hospital’s other charges, Molina stated “[t]he claim dated 7/30/02 - 8/14/02 will be paid because the baby appeared to be covered by IHC Health Plans at that time and LDS Hospital would not have known to authorize with Molina Healthcare.” *See App. Rec.*, p. 2. This is exactly the argument that LDS Hospital made to the Administrative Law Judge and is making to this Court for the payment of the August 19, 2002 through October 29, 2002 charges.



Molina at the time it agreed to pay for the July 30, 2002 through August 14, 2002 charges had all of the relevant information at its disposal. There is no evidence in the Record to indicate that LDS Hospital's knowledge changed on August 19, 2002.

In fact, all of the evidence presented by LDS Hospital was that the situation was the same. All verifications indicated that Keyontae Pittman was still covered by IHC Health Plans during the August 19, 2002 through October 29, 2002 admission. *See App. Rec., p. 70.* The fact that Pittman was not covered by IHC Health Plans was not discovered until December 18, 2002. *See App. Rec., p. 70.* This fact is unchallenged by the Department.

Further, there was no Medicaid certification for Keyontae Pittman at the time of the August 19, 2002 admission. *See App. Rec., p. 121 (certifying Medicaid on August 26, 2002).*

Therefore, Molina should have paid LDS Hospital for the August 19, 2002 charges under the same basis that it paid for the July 30, 2002 through August 14, 2002 charges, i.e. that LDS Hospital "would not have known to authorize with Molina Healthcare."

***B. The Department's Emergency Services Argument is Not Supported by the Record.***

The Department tries to argue to this Court that the reason the charges before August 19, 2002 were paid was because they were for emergency services. *See Appellee's Brief, p. 4, fn. 1.* However, this argument is not only unsupported by the Record, it contradicts the explanation given by Molina to LDS Hospital. *See App. Rec., p. 2.* Molina admitted that the reason was that "the baby appeared to be covered by IHC Health Plans at that time and LDS Hospital would not have known to authorize with Molina Healthcare." *See App. Rec., p. 2.* The Department is simply trying to explain a situation where Molina paid for the charges without authorization for the same reasons that

LDS Hospital is asserting in this appeal. This Court should not allow the Department to substitute its unsupported reasoning for the facts in the Record.

***C. There is No Evidence, or Finding, that Primary Children's Hospital had the Same Information as LDS Hospital.***

In several places throughout its brief, the Department implies or asserts that Primary Children's Hospital obtained authorization for the treatment of Keyontae Pittman knowing the same facts as LDS Hospital. *See Appellee's Brief, pp. 5, 8, 11, and 12.* However, these assertions are not supported by the record. There is no evidence in the record that reflects what knowledge Primary Children's received from Keyontae Pittman's mother or other sources. The fact is that the Department did not present any evidence of Primary Children's knowledge to the Administrative Law Judge. Therefore, the Department cannot now claim that both LDS Hospital and Primary Children's Hospital had the same knowledge. Since there is no evidence that comparing LDS Hospital's actions and the actions of Primary Children's Hospital is valid, these arguments are both irrelevant and misleading to the Court.

**II. THE UTAH DEPARTMENT OF HEALTH HAS STILL FAILED TO EXPLAIN HOW IT WAS POSSIBLE FOR LDS HOSPITAL TO MEET THE MOLINA AUTHORIZATION REQUIREMENTS.**

In its Brief, the Department makes the following statement in its summary of argument:

The Presiding Officer properly determined that The Hospital had not authorized with Molina Health Care for the final admission from August 19, 2002 through October 29, 2002 and therefore was not entitled to payment from Molina. The Medical Provider Manual (Addendum C), Utah Administrative Rule 414-1-13 (Addendum 2) and the contract between the Hospital and Molina ( R. 22-23) all require the Hospital comply with the authorization requirement for payment through Molina and the Hospital failed to do so. ***The Hospital has offered no reason why the contract provisions should not apply to this particular case.***

*See Appellee's Brief, p. 6 (emphasis added).*

It strains credibility for the Department to assert that LDS Hospital has “offered no reason why the contract provisions should not apply to this particular case.” LDS Hospital has spent more than a year appealing a decision by Molina Health Care through the Administrative Law Judge and on to this Court. Throughout this process, LDS Hospital has constantly asserted reasons why it should be paid for its treatment of Keyontae Pittman from August 19, 2002 through October 29, 2002.

In contrast, after all this time, the Department has failed to explain how LDS Hospital could have accomplished either preauthorization from Molina or notification within 48 hours of admission to Molina as required by the Provider Manual and the Contract. In its Brief, the Department does not devote a single word to explaining to this Court how LDS Hospital could have achieved the required authorization. Instead, the Department simply states that “[t]he argument of impossibility is meritless on its face” without any reference or basis in the record. *See Appellee’s Brief, p. 8.*

That is because, as again shown below, it was factually impossible for LDS Hospital to meet the policy requirements applied by Molina, the Administrative Law Judge, and the Department.

***A. The Decision that Was Appealed to the Administrative Law Judge was Molina’s Denial of the Claim for Lack of Authorization.***

Turning to the record before this Court, it is clear that the reason LDS Hospital appealed to the Administrative Law Judge was that Molina had refused to pay for the August 19, 2002 through October 29, 2002 treatment of Keyontae Pittman. *See App. Rec., pp. 2, 27-77.* The sole reason listed for Molina’s decision was “no authorization for an inpatient stay.” *See App. Rec., pp. 2.*

***B. Molina's Authorization Policies Required that LDS Hospital Obtain Preauthorization or Provide Notice Within 48 Hours of Admission.***

As cited by the Administrative Law Judge, Molina's authorization policies require notification of "any urgent or emergent hospital admission by the second working day after such admission . . . ". *See App. Rec., pp. 195*. These provisions are the only authorization requirements before this Court. There were no authorization policies submitted to either the Administrative Law Judge or this Court that require 1) authorization at a time later than admission or 2) notification at a time later 48 hours.

***C. It is Undisputed that LDS Hospital Could Not Obtain Preauthorization or Provide Notice within 48 Hours of Admission.***

Keyontae Pittman was not certified for Molina Medicaid until August 26, 2002. *See App. Rec., pp. 121*. This was 7 days after his admission at LDS Hospital on August 19, 2002. *See App. Rec., pp. 69*. While Pittman's coverage was made retroactive back to July 22, 2002, the coverage did not exist until August 26. *See App. Rec., p. 121*. Therefore, it is undisputed that LDS Hospital could not obtain preauthorization or provide notice within 48 hours of admission.

***D. The Department Has Created a Situation Where LDS Hospital Could Never Comply with Molina's Authorization Policies.***

Under the arguments articulated by the Department, LDS Hospital could never meet the requirements for being paid for the treatment of Keyontae Pittman from August 19, 2002 through October 29, 2002. There is no evidence in the Record that Keyontae Pittman was certified for Medicaid before August 26, 2002. *See App. Rec., p. 21*. The Department has not explained to the Court how preauthorization could occur at admission or how notification could occur within 48 hours of admission with no Medicaid coverage. Therefore, the Department has created an impossible situation for LDS Hospital to be paid. This type of reasoning should not be condoned by this Court.

Therefore, the decision of the Department should be reversed and LDS Hospital paid for its treatment of Keyontae Pittman.

### **III. THE DEPARTMENT IMPROPERLY CITED TO STRICKEN EVIDENCE ABOUT LDS HOSPITAL'S ALLEGED KNOWLEDGE OF COVERAGE.**

In its Brief, the Department asserts that LDS Hospital had knowledge that Keyontae Pittman was covered by Molina Medicaid beginning on July 22, 2002. *See Appellee's Brief*, pp. 5 and 12. This evidence is misleading to the Court for at least two reasons.

#### ***A. The Evidence Cited to by The Department was Stricken from the Record as Untimely.***

First, the evidence cited in the Department's Brief was stricken from the record by the Administrative Law Judge as untimely. *See App.Rec.*, pp. 165-167 (*additional evidence submitted*), 168-169 (*LDS Hospital's objection*), and 192, 195 (*the evidence being struck*). Therefore, the evidence is not properly before this Court and, certainly, should not be used as the basis for the Department's arguments.

#### ***B. The Evidence Cited to by the Department is Misleading because it is Incomplete.***

Second, the evidence used by the Department was not only stricken by the Administrative Law Judge, but was also incomplete. The records referenced by the Department do list Molina as a payer on the account. However, it does not reflect when Molina was added as a payee to the account. Therefore, these records, without more, are not evidence of when LDS Hospital received notice of Molina Healthcare as an insurance payee for Keyontae Pittman.

For these reasons, this Court should not consider the records and letter at pages 165 through 167 of the Record and cited to on pages 12 of Appellee's Brief.

#### **IV. THE DEPARTMENT'S PROCEDURAL CHALLENGES TO LDS HOSPITAL'S APPEAL ARE WITHOUT MERIT.**

The Department spends half of the argument section of its brief challenging LDS Hospital's appeal on procedural grounds, rather than the merits. The Department asserts that LDS Hospital's appeal is defective for the following reasons:

1. LDS Hospital Failed to Preserve the Issues Presented on Appeal;
2. LDS Hospital Failed to Meet the Requirements of Rule 24(a)(9), By Inadequately Briefing the Arguments Presented on Appeal; and
3. LDS Hospital Has Failed to Properly Challenge the Findings of the Presiding Officer.

However, despite its attention to these arguments, they are without merit.

##### ***A. LDS Hospital Preserved the Issues Presented on Appeal.***

The Department asserts that LDS Hospital did not 1) specifically raise issues to the Administrative Law Judge, and 2) did not introduce supporting evidence or relevant legal authority. *See Appellee's Brief*, pp.7-8. However a simple review of the Record will refute the Department's arguments. LDS Hospital filed a letter brief with the Administrative Law Judge on September 15, 2003, which had account notes attached as Exhibits A through F. *See App.Rec.*, pp. 27-78. LDS Hospital filed a second letter brief with the Administrative Law Judge on January 20, 2004, which had coverage documentation attached as Exhibits A through F. *See App.Rec.*, pp. 114-139. As this Court can see, these letter briefs raise all of the issues that are now being presented to this Court.<sup>1</sup> Therefore, LDS Hospital has met the requirements for preserving its issues on appeal. *See Badger v. Brooklyn Canal Co.*, 966 P.2d 844, 847 (Utah 1998).

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<sup>1</sup>This Court will note that there was no hearing on this matter. Instead, it was submitted by letter briefs to the Administrative Law Judge.

Since LDS Hospital has met its burden of preserving its issues for appeal, there is no need to present any grounds for reviewing issues not preserved. *See Appellee's Brief*, pp. 8-9.

***B. LDS Hospital Met the Requirements of Rule 24(a)(9).***

The Department also asserts that LDS Hospital did not meet the requirements of Rule 24(a)(9) in Brief filed on August 27, 2004. *See Appellee's Brief*, p. 9. Rule 29(a)(9) states:

An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to authorities, statutes, and parts of the record relied on. . . .

Utah R. App. P. Rule 24(a)(9).

By looking at pages 2 through 18, this Court can see that LDS Hospital has met the requirements of Rule 24(a)(9). *See Brief of Petitioner*, pp. 2-18. LDS Hospital has met the requirements of presenting its contentions and reasons with respect to the issues before this Court. *See Brief of Petitioner*, pp. 2-18. The Court can clearly see that LDS Hospital cited extensively to the record. *See Brief of Petitioner*, pp. 2-18. Further, LDS Hospital presented legal authority in its brief, despite the fact that this case does not turn on a dispute over the legal authority. *See Brief of Petitioner*, pp. 2-18.

For these reasons, this Court should find that LDS Hospital met its burden of briefing its arguments under Rule 24(a)(9).

***C. LDS Hospital has Properly Challenged the Findings of the Department.***

The Department has asserted that LDS Hospital failed to properly challenge the finding that the treatment of Keyontae Pittman from August 19, 2002 through October 29, 2002 was urgent or emergent care. *See Appellee's Brief*, p. 10. This is true because LDS Hospital has not made an

argument on this appeal that the treatment was urgent or emergent care that did not require an authorization. This is a moot issue since LDS Hospital has not made the issue of emergency care a basis for reversal of the Department's decision. However, this issue does not affect the validity or persuasiveness of LDS Hospital's remaining issues on appeal.

### **CONCLUSION**

In conclusion, the Department has erred in upholding the denial of payment by Molina for the treatment of Keyontae Pittman from August 19, 2002 through October 29, 2002. Specifically, the Department incorrectly applied R414-1-13, the Utah Medicaid Provider Manual, and the Contract between Petitioner and Respondent as requiring authorization, under the facts presented above. Further, the Department erred by holding that, under the facts presented above, LDS Hospital should have known to authorize with Molina or even could have obtained the required authorization. This decision by the Department reflects an abuse of discretion, arbitrary and capricious action, and an action that is not supported by substantial evidence. Finally, the Department's decision lacks any accounting of the facts that existed in this specific case.

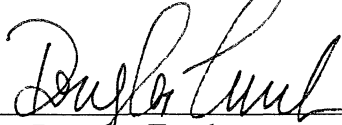
For these reasons, Petitioner respectfully requests that this Court order that LDS Hospital be paid the contractually required amount for the treatment of Keyontae Pittman from August 19, 2002 through October 29, 2002, with total charges of \$222,986.20.

Petitioner respectfully requests that it receive all other relief to which it is entitled.



Respectfully submitted,

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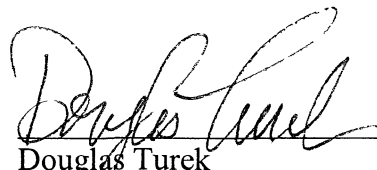
ATTORNEY FOR PETITIONER

### CERTIFICATE OF FILING AND SERVICE

I, Douglas Turek, certify that on December 29, 2004 I served a copy of the attached Reply Brief of Petitioner upon Rex Olsen, the counsel for the respondent in this matter, by mailing it to him via First class mail, return receipt requested, with sufficient postage prepaid to the following address:

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